

**OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE**

[Docket No. WTO/DS-363]

**WTO Dispute Settlement Proceeding
Regarding China—Measures Affecting
Trading Rights and Distribution
Services for Certain Publications and
Audiovisual Entertainment Products**

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that on April 10, 2007, in accordance with the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement), the United States requested consultations with respect to (1) Certain measures that restrict trading rights with respect to imported films for theatrical release, audiovisual home entertainment products (e.g., video cassettes and DVDs), sound recordings, and publications (e.g., books, magazines, newspapers, and electronic publications), and (2) certain measures that restrict market access for, or discriminate against, foreign suppliers of distribution services for publications and foreign suppliers of audiovisual services (including distribution services) for audiovisual home entertainment products. That request may be found at <http://www.wto.org> contained in a document designated as WT/DS363/1. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the consultations, comments should be submitted on or before May 7, 2007 to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) Electronically, to FR0708@ustr.eop.gov, with “China Trading Rights and Distribution Services (DS363)” in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395-3640, with a confirmation copy sent electronically to the electronic mail address above, in accordance with the requirements for submission set out below.

FOR FURTHER INFORMATION CONTACT: Steven F. Fabry, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395-3150.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C.

3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. In an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (“DSU”). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within nine months after it is established.

Major Issues Raised by the United States

On April 10, 2007, the United States requested consultations with China with respect to certain measures pertaining to the protection and enforcement of intellectual property rights in China.

The first matter on which the United States has requested consultations concerns certain measures of China that reserve to certain Chinese state-designated and wholly or partially state-owned enterprises the right to import films for theatrical release, audiovisual home entertainment products (e.g., video cassettes and DVDs), sound recordings, and publications (e.g., books, magazines, newspapers, and electronic publications). In this regard, the measures at issue include the following, as well as any amendments and related or implementing measures:

- The Regulations on Administration of the Films Industry;
- The Provisional Rules on the Entry Criteria for Operating Film Enterprises;
- The Administrative Regulation on Publishing;
- The Administrative Regulations on Audiovisual Products;
- The Catalogue for Guidance of Foreign Investment Industries;
- The Several Opinions of the Ministry of Culture, State Administration of Radio, Film and Television, General Administration of Press and Publication, National Development and Reform Commission and the Ministry of Commerce on Introducing Foreign Investment into the Cultural Sector;
- The Measures for the Administration of Import of Audio and Video Products;
- The Measures for Administration of Chinese Foreign Contractual Distribution Ventures of Audiovisual Products;

- The Administrative Regulations on Electronic Publications; and
- The Procedure for Examination and Approval of Establishment of Publication Importation Entities.

It appears that these measures do not allow all Chinese enterprises and all foreign enterprises and individuals to have the right to import the Products into the customs territory of China. It also appears that foreign individuals and enterprises, including those not invested or registered in China, are accorded treatment less favorable than that accorded to enterprises in China with respect to the right to trade. These measures appear to USTR to be inconsistent with China’s obligations under paragraphs 1.2, 5.1 and 5.2 of Part I of the Protocol on the Accession of the People’s Republic of China and Article XI:1 of the General Agreement on Tariffs and Trade 1994.

The second matter on which the United States has requested consultations concerns certain measures of China that impose market access restrictions or discriminatory limitations on foreign service providers seeking to engage in the distribution of publications and certain audiovisual home entertainment products. In this regard, the measures at issue include the following, as well as any amendments and related or implementing measures:

- The Administrative Regulation on Publishing;
- The Administrative Regulations on Audiovisual Products;
- The Provisions on Guiding the Orientation of Foreign Investment;
- The Catalogue for Guidance of Foreign Investment Industries;
- The Several Opinions of the Ministry of Culture, State Administration of Radio, Film and Television, General Administration of Press and Publication, National Development and Reform Commission and the Ministry of Commerce on Introducing Foreign Investment into the Cultural Sector;
- The Administrative Regulations on Management of Foreign-Invested Book, Magazine and Newspaper Distribution Enterprises;
- The Administrative Regulations on the Publication Market (revised);
- The Administrative Regulations on Electronic Publications;
- The Administrative Measures on Subscription of Imported Publications;
- The Procedure for Examination and Approval of Establishment of Chinese-Foreign Entities, Cooperative Joint Ventures, and Wholly Foreign Owned Publication Distribution Enterprises; and

• The Measures for Administration of Chinese Foreign Contractual Distribution Ventures of Audiovisual Products.

It appears that these measures prohibit foreign service suppliers (including wholly or partially foreign-owned or foreign-invested enterprises) from engaging at least in certain types of distribution of publications and audiovisual home entertainment products within China. In addition, to the extent that some foreign service suppliers are allowed to engage in some aspects of the distribution of publications, there appear to be discriminatory requirements concerning such suppliers' registered capital, such suppliers' operating term, and the particular publications that such suppliers may distribute. Furthermore, to the extent that foreign services suppliers are permitted to engage in any distribution of audiovisual home entertainment products, the measures at issue appear to impose requirements that the service be supplied through a form of entity that Chinese persons control, or in which Chinese persons have a dominant position, or for which there is a limitation on the participation of foreign capital. These measures appear to USTR to be inconsistent with China's obligations under Articles XVI and XVII of the General Agreement on Trade in Services.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments should be submitted (i) Electronically, to FR0708@ustr.eop.gov, with "China Trading Rights and Distribution Services (DS363)" in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395-3640, with a confirmation copy sent electronically to the electronic mail address above.

USTR encourages the submission of documents in Adobe PDF format as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Comments must be in English. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business

confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly designated as such and "BUSINESS CONFIDENTIAL" must be marked at the top and bottom of the cover page and each succeeding page. Persons who submit confidential business information are encouraged also to provide a non-confidential summary of the information.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

- (1) Must clearly so designate the information or advice;
- (2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" at the top and bottom of the cover page and each succeeding page; and
- (3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions; the submissions, or non-confidential summaries of submissions, received from other participants in the dispute; the report of the panel; and, if applicable, the report of the Appellate Body. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the public file (Docket WTO/DS-363, China Trading Rights and Distribution Services Dispute) may be made by calling the USTR Reading Room at (202) 395-6186.

Daniel Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

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OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS-362]

WTO Dispute Settlement Proceeding Regarding China—Measures Affecting the Protection and Enforcement of Intellectual Property Rights

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that on April 10, 2007, in accordance with the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement), the United States requested consultations with respect to certain measures pertaining to the protection and enforcement of intellectual property rights in China. That request may be found at <http://www.wto.org> contained in a document designated as WT/DS362/1. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the consultations, comments should be submitted on or before May 7, 2007 to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) Electronically, to FR0707@ustr.eop.gov, with "China IPR Protection and Enforcement (DS362)" in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395-3640, with a confirmation copy sent electronically to the electronic mail address above, in accordance with the requirements for submission set out below.

FOR FURTHER INFORMATION CONTACT: Steven F. Fabry, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395-3150.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. In an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would